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E.O. 12958: DECL: 07/26/2032
TAGS: [MTCRE](#) [MNUC](#) [PARM](#) [ETTC](#) [KSCA](#) [TSPA](#) [GM](#)
SUBJECT: GERMAN VIEWS ON U.S. COUNTERPROPOSALS FOR MTCR
DENIAL NOTIFICATIONS

REF: A. BERLIN 1031

- [1](#)B. STATE 60588
- [1](#)C. BERLIN 598
- [1](#)D. BERLIN 541
- [1](#)E. STATE 28937
- [1](#)F. BERLIN 281

Classified By: Acting Minister-Counselor for Economic Affairs Douglas B
. Neumann, for reasons 1.4 (b) and (d).

[1](#)1. (U) This is an action request -- see paragraph 9.

[1](#)2. (C) Officials from the German Ministries of Foreign Affairs and Economics and Technology passed the following English-language non-paper to Global Affairs officer July 24. The non-paper is a response to U.S. follow-up comments (see ref B) on Germany's revised proposal for denial notifications in the Missile Technology Control Regime (MTCR) (see ref C).

[1](#)3. (C) Markus Klinger, deputy office director of the MFA's Export Control Division, discussed several points of the U.S. follow-up comments. Under the heading ///BASIC ELEMENTS///, the USG recommended that the word "formal" be deleted from the first sentence under "Decisions on Transfers" concerning MTCR Partners' notification of a denial in response to an inquiry. Klinger said the German Government agrees with this point and favors the USG's revised text, which reads: "1. Partners should advise the Point of Contact of a denial in response to an inquiry or a request for export license within four weeks after the final decision, or as soon thereafter as practicable."

[1](#)4. (C) Klinger added, however, that the German Government has questions concerning the USG comment: "The U.S. has never initiated consultations pursuant to the Aide Memoire and hopes no Partner considers it necessary to do so." Germany would like to know the U.S. rationale for never initiating these consultations and why the USG hopes no Partner will consider it necessary to do so, especially since Germany has initiated the most consultations, Klinger said.

[1](#)5. (C) Klinger and Guenther Sproegel, office director of the Economics Ministry's International Export Control Regimes Division, also rejected the U.S. suggestion that the definition of an "essentially identical" transfer should include an item with the same specifications, same end-user, and same end-use. They said Germany prefers to keep its original definition of an "essentially identical" transfer as including an item with the same specifications and same end-user. According to Klinger, the same specifications and same end-user are "objective" pieces of data, but an end-use statement, which could be misleading, vague, or even falsified, is "subjective." Sproegel said the idea behind denials is to give Partners an opportunity to consult one another. If the MTCR adopts the U.S. definition of

"essentially identical" transfers, Sproegel argued, "less serious" Partners could use a differently worded end-use statement to consider a transfer not essentially identical to one denied by another Partner and therefore avoid consulting that Partner. Sproegel said Germany's proposal is an attempt to introduce some discipline into the MTCR so that Partners will be compelled to consult on denials.

¶6. (C) Addressing the U.S. concern that the German definition of "essentially identical" transfers would lead to too many consultations and pose an undue burden on exporters like the United States, Sproegel argued that the number of consultations would not be excessive. He said the German Government is compiling data on consultations and will publicize the results of its study in the MTCR. Moreover, Sproegel said, Germany has arranged a procedure for consultations with the U.S. -- if one party does not respond to the other's denial notification within a four-week period, then no consultations are needed.

¶7. (C) Sproegel said Germany hopes to receive a response from the USG by August 15, so that Germany can revise its denial notifications proposal and submit it to the POC well before the November 5-9 plenary in Athens.

¶8. (SBU) Begin text of English-language German non-paper:

German views on US recommendation for "essentially identical transfer"

(Ref.: German MTCR Discussion Paper "Denial Notification and Related Procedures" (doc. POC 053); US Non Paper dated 4 May 2007)

Germany highly appreciates US feedback on its discussion paper. In its bilateral feedback dating 4 May 2007 the US proposed a wording, whereby a transfer is essentially

identical, if the item, end-use, and end-user of a transfer match that of a denial issued by another Partner. In view of the potential impact of the proposed wording on the no undercut policy and on the level of case-based co-ordination and information exchange amongst Partners, allow us to share some of our concerns:

The MTCR no undercut policy is intended to ensure that MTCR Partners are following a common approach to controls on MTCR-related exports. If one Partner denies an export of a MTCR-listed item for MTCR non-proliferation reasons, all other members agree not to approve essentially identical transfers without first consulting the Partner that issued the denial.

The wording proposed by the US would imply that the no undercut policy does not apply in cases where item and end user are identical,

-- but the Partner assumes there is a different end use, or

-- where the Partner has reasonable doubts, whether the end use of the transfer actually matches that of a denial.

For Germany as a country that issues a substantial amount of MTCR denial notifications, these implications would pose a considerable problem for the following reasons:

The wording proposed by the US could be misinterpreted and lead to inadvertent disregard of denials which do concern essentially identical transfers. In addition, Partners would have difficulties to verify, whether the end-use of a transfer matches that of a denial issued by another Partner:

-- Partners may be inclined to refer to the "stated end-use" in a denial notification when comparing the end-use of a transfer with that of a denial. However, in many cases, the information in the denial on the "stated end-use" is no suitable reference information to decide whether the no undercut policy applies or not. Where the reason for denial is risk of diversion, the denial is based on general

information related to the end-user rather than the "stated end-use". Moreover, in sensitive cases the end-use stated by the end user requires close scrutiny.

-- Information in the denial about the reason for the denial (usually "risk of diversion" or "risk of use in program of concern") is too vague to check whether the end-use of a transfer actually matches that of a denial. And consultation only in those cases where Partners share the general proliferation concerns expressed in a denial is of little added value from a non-proliferation perspective.

The responses to the survey show that the vast majority of countries currently understands the term "essentially identical transfer" to include cases, where the item and the end-user are essentially identical. We feel that the Best Practices should not question the current level of bilateral co-ordination and information exchange amongst Partners.

We hope that these explanation will facilitate the preparation of a consensus decision to be reached at the Athens Plenary, and would be grateful for your early comments, if possible by August 15.

End text.

19. (U) Post requests guidance to respond to the German Government by the requested deadline.

TIMKEN JR